

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #2	CCRB Case #: 201902570	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/22/2019 9:10 PM	Location of Incident: 1903 West Farms Road	Precinct: 48	18 Mo. SOL 9/22/2020	EO SOL 5/9/2021	
Date/Time CV Reported Mon, 03/25/2019 4:50 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 03/25/2019 4:50 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Rafael Santos	04863	964754	048 PCT
2. POM David Ramirez	25053	962711	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Rafael Santos	Abuse: Police Officer Rafael Santos stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM David Ramirez	Abuse: Police Officer David Ramirez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM David Ramirez	Abuse: Police Officer David Ramirez frisked § 87(2)(b)	
D.POM Rafael Santos	Abuse: Police Officer Rafael Santos searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
E.POM Rafael Santos	Force: Police Officer David Ramirez used physical force against § 87(2)(b)	
F.POM Rafael Santos	Abuse: Police Officer Rafael Santos interfered with § 87(2)(b)'s use of a recording device.	
G.POM David Ramirez	Force: Police Officer David Ramirez used physical force against § 87(2)(b)	
H.POM David Ramirez	Off. Language: Police Officer David Ramirez made remarks to § 87(2)(b) based upon race.	
I.POM David Ramirez	Discourtesy: Police Officer David Ramirez spoke discourteously to § 87(2)(b)	
J.POM David Ramirez	Abuse: Police Officer Rafael Santos frisked § 87(2)(b)	
K.POM David Ramirez	Abuse: Police Officer David Ramirez searched § 87(2)(b)	
L.POM Rafael Santos	Abuse: Police Officer Rafael Santos searched § 87(2)(b)	
M.POM David Ramirez	Discourtesy: Police Officer David Ramirez acted discourteously toward § 87(2)(b)	
N.POM David Ramirez	Abuse: Police Officer David Ramirez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
O.POM Rafael Santos	Abuse: Police Officer Rafael Santos refused to provide his name to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
P.POM David Ramirez	Abuse: Police Officer David Ramirez refused to provide his name to § 87(2)(b)	
Q.POM Rafael Santos	Abuse: Police Officer Rafael Santos refused to provide his shield number to § 87(2)(b)	
R.POM David Ramirez	Abuse: Police Officer David Ramirez refused to provide his shield number to § 87(2)(b)	
S.POM Rafael Santos	Abuse: Police Officer Rafael Santos failed to provide § 87(2)(b) with a business card.	
T.POM David Ramirez	Abuse: Police Officer David Ramirez failed to provide § 87(2)(b) with a business card.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
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§ 87(4-b), § 87(2)(g)		

Case Summary

On March 25, 2019, § 87(2)(b) filed the following complaint in-person at the CCRB.

On March 22, 2019, at approximately 9:10 PM, in the vicinity of 1903 West Farms Road in the Bronx, § 87(2)(b) and his friend § 87(2)(b) – after an evening of smoking marijuana in their vehicle – were pulled over by Police Officer David Ramirez and Police Officer Rafael Santos of the 48th Precinct (**Allegations A,B: Abuse of Authority – Vehicle Stop**, § 87(2)(g)). Police Officer Ramirez first came to § 87(2)(b) the driver, ordered him out of the vehicle, took him to the rear of the vehicle, and frisked him (**Allegation C: Abuse of Authority – Frisk**, § 87(2)(g)). At the same time, on the opposite side of the vehicle, Police Officer Santos told § 87(2)(b) to exit as well. However, § 87(2)(b) failed to comply and instead retrieved his cell phone to video record the encounter. In response, Police Officer Santos reached through the open passenger-side window, unlocked the door, grabbed § 87(2)(b) and pulled him outside (**Allegation D: Abuse of Authority – Vehicle Search**, § 87(2)(g); **Allegation E: Force – Physical Force**, § 87(2)(g)). Police Officer Santos then took the phone out of § 87(2)(b) hands and threw it back into the vehicle, thus preventing him from video recording (**Allegation F: Abuse of Authority: Recording Interference**, § 87(2)(g)).

Once outside the vehicle, Police Officer Santos allegedly turned § 87(2)(b) around, “slammed” him against the vehicle, and began handcuffing him (**subsumed under Allegation E**, § 87(2)(g)). Police Officer Ramirez then came over to § 87(2)(b) and allegedly punched him repeatedly (**Allegation G: Force – Physical Force**, § 87(2)(g)). While striking § 87(2)(b) Police Officer Ramirez allegedly stated, “I do this to niggers like you every day.” (**Allegation H: Offensive Language – Race**, § 87(2)(g)) Police Officer Ramirez allegedly also stated that § 87(2)(b) mother “sucks his nuts.” (**Allegation I: Discourtesy – Word**, § 87(2)(g)). § 87(2)(b) was eventually handcuffed by Police Officer Santos. Police Officer Ramirez then frisked § 87(2)(b) (**Allegation J: Abuse of Authority – Frisk**, § 87(2)(g)). Police Officer Ramirez and Police Officer Santos then allegedly searched § 87(2)(b) person – inside his jacket and jeans pockets, and inside his boots (**Allegations K, L: Abuse of Authority – Search (person)**, § 87(2)(g)).

Upon recovering a bag of marijuana from § 87(2)(b) pocket, Police Officer Ramirez allegedly dumped it onto the street (**Allegation M: Discourtesy – Action**, § 87(2)(g)). Police Officer Ramirez then proceeded to search the interior of the vehicle (**Allegation N: Abuse of Authority – Vehicle Search**, § 87(2)(g)). After finding no contraband in the vehicle, the officers uncuffed § 87(2)(b) and told him and § 87(2)(b) they were free to go. § 87(2)(b) allegedly asked both officers for their names and shield numbers, but neither responded (**Allegations O, P: Abuse of Authority – Refusal to Provide Name**, § 87(2)(g); **Allegations Q, R: Abuse of Authority – Refusal to Provide Shield Number**, § 87(2)(g)). Neither § 87(2)(b) nor § 87(2)(b) were summonsed or arrested.

The officers ultimately failed to provide Right to Know Act (RTKA) business cards to § 87(2)(b) or § 87(2)(b) (**Allegations S, T: Abuse of Authority – Failure to Provide RTKA card**, § 87(2)(g)). § 87(4-b), § 87(2)(g)

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§ 87(2)(b) provided a three second cell phone video recording of the incident (Board Review 06). A 15 second recording of the incident was obtained from Police Officer Santos’s BWC (Board

Review 07). Police Officer Ramirez did not activate his BWC (Board Review 04).

Because § 87(2)(b) alleged that the officers stole money from him during the incident, an IAB spin-off was generated under CCRB case number 201903150.

§ 87(2)(g)

(Board Review 22).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Rafael Santos stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Police Officer David Ramirez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) was interviewed at the CCRB on March 5, 2019 (Board Review 01) and provided a follow-up telephone statement on February 5, 2020 (Board Review 09). Despite extensive efforts to contact § 87(2)(b) the investigation was unable to obtain a statement from him. Police Officer Santos was interviewed at the CCRB on October 22, 2019 and November 12, 2019 (Board Review 02-03). Police Officer David Ramirez was interviewed at the CCRB on October 24, 2019 and November 26, 2019 (Board Review 04-05).

The following facts are undisputed: On the evening of March 22, 2019, § 87(2)(b) and § 87(2)(b) while driving around the Bronx in § 87(2)(b)'s vehicle after having smoked marijuana in the vehicle. At approximately 9:10 PM, in front of 1903 West Farms Road, they were pulled over by Police Officer Ramirez and Police Officer Santos. Police Officer Ramirez ordered § 87(2)(b) out of the vehicle and frisked him. Because § 87(2)(b) refused to exit, Police Officer Santos reached into the vehicle and pulled him out, at which time he also took § 87(2)(b)'s phone from him. Upon handcuffing § 87(2)(b) Police Officer Ramirez then frisked him. Police Officer Ramirez then conducted a search of the vehicle. The officers ultimately released § 87(2)(b) and § 87(2)(b) without issuing a summons, and without providing RTKA business cards.

§ 87(2)(b) stated that § 87(2)(b) had committed no moving or equipment-related traffic violations prior to the vehicle being pulled over by officers. § 87(2)(b) was in possession of a bag of about 14 grams of unsmoked marijuana. In his follow-up telephone statement § 87(2)(b) stated that the officers never referenced § 87(2)(b)'s headlights during the course of the stop, and he believed that they were both in working condition.

Police Officer Ramirez and Police Officer Santos both stated that they stopped the vehicle in question after observing it travelling in the vicinity of West Farms Road with only one functioning headlight. The officers were unclear about how and where they made the initial observation, and neither could explain exactly how the headlight was defective.

Only Police Officer Santos activated his BWC during the stop (Board Review 07, 08). The 15-second video appears to show Police Officer Santos standing outside the open passenger door, but no physical activity is discernible. In his CCRB interview, Police Officer Santos reviewed the video and confirmed that it was his voice instructing § 87(2)(b) to put his hands behind his back, once he had been removed from the vehicle.

§ 87(2)(b) was only able to video record three seconds of the incident: the footage shows a

marked police vehicle driving away from § 87(2)(b) but nothing more (Board Review 06). The only documentation of the stop by either officer is a fly page entry in Police Officer Santos' memo book, noting, "1 male stopped @ West Farms Rd, highly uncoop. / uncoop. V. stop. 91." (Board Review 09, *[sic]*) Police Officer Santos said he made the notation after the stop was completed but did not recall why he chose to use the fly page, or why he did not chronologically log it with a time of occurrence.

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Rafael Santos searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (E) Force: Police Officer Rafael Santos used physical force against § 87(2)(b).

Allegation (F) Abuse of Authority: Police Officer Rafael Santos interfered with § 87(2)(b)'s use of a recording device.

Allegation (G) Force: Police Officer David Ramirez used physical force against § 87(2)(b).

§ 87(2)(b) stated that, following the vehicle stop, Police Officer Ramirez came to § 87(2)(b) on the driver's side and Police Officer Santos approached § 87(2)(b) on the front passenger side. After obtaining § 87(2)(b)'s driver's license and registration, without explaining why they had been stopped, Police Officer Ramirez ordered both § 87(2)(b) and § 87(2)(b) to exit the vehicle. § 87(2)(b) complied and went to the rear of the vehicle with Police Officer Ramirez. However, § 87(2)(b) acknowledged that he refused to exit and instead began activating the camera function on his cell phone to record the encounter. In response, Police Officer Santos reached in through the open window, unlocked the door, pulled § 87(2)(b) out, grabbed the phone from his hands, and threw it onto the passenger seat. Police Officer Santos then turned him around, "slammed" his chest against the side of the vehicle and began handcuffing him. Police Officer Ramirez then ran over and punched § 87(2)(b) on the back of his head and then repeatedly on his left ribcage about twelve times. § 87(2)(b) believed that he did nothing to provoke the physical escalation and denied struggling, resisting or fighting the officers.

Police Officer Ramirez and Police Officer Santos both stated that they detected the odor of burnt marijuana emanating from the interior of the vehicle once they reached it, with Police Officer Ramirez at the driver's side window and Police Officer Santos at the front passenger side window. Having undertaken marijuana-related enforcement action in the past, both officers recognized its distinctive odor.

Police Officer Ramirez stated that he advised § 87(2)(b) that he had been stopped for his defective headlight and obtained his driver's license and registration. At this point, Police Officer Ramirez also observed through the open window that the center console was littered with the residual ends of several burnt marijuana cigarettes. When Police Officer Ramirez asked § 87(2)(b) about the marijuana odor, he acknowledged that he had recently smoked marijuana in the vehicle. § 87(2)(b) then disclosed to Police Officer Ramirez that he was in possession of more marijuana in the vehicle.

Police Officer Ramirez ordered § 87(2)(b) and § 87(2)(b) to exit the vehicle. § 87(2)(b) and

Police Officer Ramirez spoke with him. While interacting with § 87(2)(b) Police Officer Rivera realized that § 87(2)(b) was being irate and uncooperative with Police Officer Santos on the other side. When he went over to assist, Police Officer Ramirez found § 87(2)(b) refusing to exit the vehicle and “mouthing off” at Police Officer Santos.

Both officers stated that they grabbed § 87(2)(b) arms and pulled him out of the vehicle because of his belligerence and non-compliance. They then turned him around, held him against the side of the vehicle, and handcuffed him – as a precautionary measure, given: that he had refused to comply with their orders; that he had kept his body “bladed” while inside the vehicle; and that he had flailed his arms, tensed his body, and pulled away while being handcuffed. While Police Officer Ramirez did not recall coming into contact with § 87(2)(b) phone, Police Officer Santos acknowledged that either he or his partner took his phone from him and placed it on the front passenger seat – simply as a matter of protocol and safety. The officers both denied doing anything to prevent § 87(2)(b) from video recording with his phone.

Police Officer Ramirez and Police Officer Santos both denied using any physical force whatsoever on § 87(2)(b) beyond the action required to pull him out of the vehicle. Both officers denied slamming him against the vehicle and both stated that Police Officer Ramirez never punched him in any manner.

During a traffic stop, an officer may order any occupants of a vehicle to exit – a “*de minimis* intrusion” in the interest of the officer’s safety Pennsylvania v. Mims, 434 US 106 [1977] (Board Review 12).

When officers detect the odor of marijuana emanating from a vehicle, they have probable cause to search the vehicle and its occupants People v. Chestnut, 36 NY2d 971 [1975] (Board Review 13).

Per NYPD Patrol Guide (P.G.) Procedures 212-49 and 203-29 (Board Review 14, 15), civilian onlookers at the scene of a police incident may photograph or video record police actions. However, the subject of a police action – whether during a detention or arrest – is not absolutely entitled to the same right.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation (C) Abuse of Authority: Police Officer David Ramirez frisked § 87(2)(b)
Allegation (J) Abuse of Authority: Police Officer Rafael Santos frisked § 87(2)(b)
Allegation (K) Abuse of Authority: Police Officer David Ramirez searched § 87(2)(b)
Allegation (L) Abuse of Authority: Police Officer Rafael Santos searched § 87(2)(b)
Allegation (M) Discourtesy: Police Officer David Ramirez acted discourteously toward § 87(2)(b)
Allegation (N) Abuse of Authority: Police Officer David Ramirez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) stated that after he was handcuffed, both Police Officer Ramirez and Police Officer Santos searched him by going through his jacket pockets and jeans pockets. Police Officer Rivera recovered the bag of marijuana from § 87(2)(b) pocket and, without saying anything, dumped the marijuana onto the street. Police Officer Ramirez then searched the interior of the vehicle. After finding no contraband inside, the officers finally uncuffed § 87(2)(b) and advised that he and § 87(2)(b) were free to leave.

Police Officer Ramirez stated that after ordered § 87(2)(b) and § 87(2)(b) to exit the vehicle, § 87(2)(b) exited on his own. Police Officer Ramirez conducted a full pat-down frisk of § 87(2)(b)'s outer garments from top to bottom, with specific attention to his waistband and pockets – as a precautionary safety measure. Police Officer Ramirez then briefly questioned § 87(2)(b) about what he was doing in the area but did not address the acknowledged marijuana consumption and possession. Due to the detected marijuana odor, Police Officer Ramirez also frisked § 87(2)(b) by patting down the length of his body and the area around his pockets. Police Officer Ramirez and Police Officer Santos both denied searching § 87(2)(b) person in any other way. Both officers also denied recovering and discarding any marijuana retrieved from § 87(2)(b) person.

Police Officer Ramirez then searched the interior of the vehicle for further evidence of contraband, because of the emanating odor of burnt marijuana, the marijuana cigarette ends he observed in plain view, and § 87(2)(b)'s admission that he had recently consumed marijuana and that he had more of it inside the vehicle. Police Officer Ramirez thus inspected the center console and the front and rear areas of the main cabin but ultimately recovered no contraband.

Without any further investigation, the officers ultimately decided to use their discretion to release § 87(2)(b) and § 87(2)(b) without taking any enforcement action. After uncuffing § 87(2)(b) they returned to their vehicle and left the scene.

When officers detect the odor of marijuana emanating from a vehicle, they have probable cause to search the vehicle and its occupants People v. Chestnut, 36 NY2d 971 [1975] (Board Review 13).

§ 87(2)(g)
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Allegation (H) Offensive Language: Police Officer David Ramirez made remarks to § 87(2)(b) based upon race.

Allegation (I) Discourtesy - Word: Police Officer David Ramirez spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that while the officers were handcuffing him, Police Officer Ramirez said, “I do this to niggers like you everyday,” and, “Your mother sucks my nuts.”

Police Officer Ramirez denied telling § 87(2)(b) that he “[does] this to niggers everyday” or that his mother “sucks his nuts.” Both officers denied using any racially or sexually offensive or discourteous language to this effect. However, they did not recall if they used other profanity during the incident.

§ 87(2)(g)

Allegation (O) Abuse of Authority: Police Officer Rafael Santos refused to provide his name to § 87(2)(b)

Allegation (P) Abuse of Authority: Police Officer David Ramirez refused to provide his name to § 87(2)(b)

Allegation (Q) Abuse of Authority: Police Officer Rafael Santos refused to provide his shield number to § 87(2)(b)

Allegation (R) Abuse of Authority: Police Officer David Ramirez refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) stated that as the officers walked back to their vehicle, he loudly asked them both for their names and shield numbers. The officers though drove away without responding.

Police Officer Santos and Police Officer Rivera both stated that they were not asked for their names or shield numbers.

§ 87(2)(g)

Allegation (S) Abuse of Authority: Police Officer Rafael Santos failed to provide § 87(2)(b) with a business card.

Allegation (T) Abuse of Authority: Police Officer David Ramirez failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) did not request or receive a RTKA business card from the officers. Police Officer Santos and Police Officer Rivera both acknowledged that they did not provide RTKA business cards to § 87(2)(b) or § 87(2)(b)

Per New York City Administrative Code 14-174, officers must offer a business card to the subject

of law enforcement activity, at the conclusion of any law enforcement activity which results in frisks and searches of individuals and vehicles but that does not result in a summons or arrest (Board Review 16).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- Neither § 87(2)(b) nor § 87(2)(b) has been a party to any other CCRB complaints (Board Review 20)
- Police Officer Ramirez has been a member of service for two years and has been a subject in 10 cases and 32 allegations, five of which were substantiated in four cases.
 - CCRB case number 201809895 involved a substantiated allegation of sexual misconduct (making sexually suggestive comments about a civilian's breasts and buttocks). The Board recommended charges and the NYPD has yet to impose a discipline.
 - CCRB case number 201900868 involved a substantiated discourtesy allegation (stating to a civilian, "The NYPD loves you."). The Board recommended charges and the NYPD has yet to impose a discipline.
 - CCRB case number 201901824 involved substantiated allegations of threat of arrest and discourtesy (stating to a civilian, "I love you, bro."). The Board recommended charges and the NYPD has yet to impose a discipline.
 - CCRB case number 201904950 involved a substantiated sexual misconduct allegation (blowing a kiss to a civilian). The Board recommended charges and the NYPD has yet to impose a discipline.
- Police Officer Santos has been a member of the service for two years and has been a subject in four cases and 14 allegations, four of which were substantiated in two cases.
 - CCRB case number 201809895 involved substantiated allegations of refusal to provide name and sexual misconduct (making sexually suggestive comments about a civilian's breasts and buttocks). The Board recommended charges and the NYPD has yet to impose a discipline.
 - CCRB case number 201901824 involved substantiated allegations of threat of arrest and discourtesy (stating to a civilian, "I love you too, bro."). The Board recommended charges and the NYPD has yet to impose a discipline.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- The results of a Notice of Claim search request to the NYC Office of the Comptroller, submitted on March 2, 2020, will be added to the case file upon receipt.
- According to the New York State Office of Court Administration, § 87(2)(b) has no prior criminal convictions in New York City (Board Review 21).

Squad No.: _____

Investigator: _____

	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date